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Chapter One
General Introduction

1.1. General Remark

The history of law reflects the history of mankind because any society has a need for rules to govern relations between people. In modern times this need has become greater and the application of legal rules has become more extensive. Consider an ordinary day in life. You may probably purchase and owns your macaroni for breakfast. The name and packaging of that macaroni belong to someone, and no one else is entitled to use them. You may pay for transportation when you go from home to work. You may enter in to the office of factory at your place of work as an employee, the enterprise for which you are working may be the company which has issued shares, the holding of which by the public entails membership of the company and a say in the running of which by the public entails membership of the company and a say in the running of its affairs. Family relationship and employee, citizen and state and numerous other relationships are all affected by the law in one way or another. Business as one set of human life never immune itself from being the subject matter of law. Just like many concepts, it is difficult to define business in universally agreed manner. However, business embrace all sort of opening up, operation and closing up commerce. Like with, the business law applies from the setting up a particular business to winding up it. Nevertheless, different set of rules and regulation will govern business. Again, a business person is required to appreciate all aspects of laws pertaining to business. With this aim in mind, the course is offered for business students to embrace substantive legal issues relating to business. For the thorough understanding of the term law and what does it do with the business it is essential to have some knowledge about the theories as well as the functions it provides to the business sector as well as to the community at large.

1.2. Definitions of Law

What is Law? Can you guess what essential points should be taken into account to define law? There are many schools of jurisprudence which concentrate on the nature and function of law. For our practical purpose we shall confine ourselves to the treatment of the most important schools. Hence, in this material the following schools shall be discussed briefly.

i. Natural Law School : -

Natural law theory is the earliest of all theories. It was developed in Greece by philosophers like Heraclitus, Socrates, Plato, and Aristotle. It was then followed by other philosophers like Gairus, Cicero, Aquinas, Gratius, Hobbes, Lock, Rousseau, Kant and Hume. In their studies of the relation between nature and society, these philosophers have arrived at the conclusion that there are two types of law that govern social relations. One of them is made by person to control the relations within a society and so it may vary from society to society and also from time to time within a society. The other one is that not made by person but controls all human beings of the world. Such laws do not vary from place to place and from time to time and even used to control or weigh the laws made by human beings. These philosophers named the laws made by human beings as **positive laws** and the laws do not made by human being as **natural laws.** Tomas Aquinas alleges that whenever man-made laws, was constructed by human beings to fit and accommodate the requirements of natural law to the needs and contexts of different and changing societies. For him natural law is self-evidently existed. Thus, for them law is originated from the divine. They also alleges that in order to validate a certain law as a la there must be the ingredient of moral. Hence, according to them when law lack such an ingredient called moral it will not be considered as a law at all. Many asked however how we are going to ascertain morality through existing societal geographical as well as other differences.

The question remains therefore, where we get these ingredients called morality. The natural law however suggest that we can get morality from the religious books (holly books), person's rations or rational thinking, societal ethos and good behaviors etc. In sum, the natural law theoreticians came up with an idea to understand the term law from the perspective of its content. The natural law theorists brought tremendous contribution to the present day of legal concept. One of the pioneer concept is 'human right'. They also laid down immeasurable contribution on moral compensation and intellectual property rights as well as other areas of law. Despite its contribution, however, no scholar could provide the precise contents of the natural law. As a result, it was subjected to criticisms of scholars like John Austin who rejected this theory and later developed the imperative called positive law theory. In sum, for natural law theoreticians the law could be considered as a law only if they inhibits moral values.

ii. Legal Positivism: (Positive or Imperative School of Law)

Also called Analytical School of jurisprudence, it holds that there is no higher law than that created by governments, legitimate or self-imposing, and that such law must be

obeyed, even if it appears unjust or otherwise at odds with the “natural” law. Unlike the natural law theory, this one treats law and other values, such as, morality and religion separately. Positive law theory is also called, imperative or analysts law theory. It refers to the law that is actually laid down by separating “is” from the law, which is “ought” to be. It has the belief that law is the rule made and enforced by the sovereign body of the state and there is no need to use reason, morality, or justice to determine the validity of law.

According to this theory, rules made by the sovereign are laws irrespective of any other considerations. For Jhon Austin therefore, ‘law is the command of the sovereign backed by sanction’ these laws, therefore, vary from place to place and from time to time. The followers of this theory include Austin, Bentham and H.L.A Hart. For these philosophers and their followers law is a command of the sovereign to his/her subjects and there are three elements in it: command; sovereign; and sanction. Command is the rule given by the sovereign to the subjects or people under the rule of the sovereign. Sovereign refers to a person or a group of persons demanding obedience in the state. Sanction is the evil that follows violations of the rule. For positivist law will be regarded as law only when the law is made by correct authority and that correct authority must follow the existing law making procedures. As long as the above cumulative elements are present law could be regarded as a law. This theory alleges that the law or norm has the status of law or being recognized as law if it recognize the human authority declared it to be law. It is said they recognized human authority because this theory is distinguishing itself from the natural law theory. Thus the content of law from the positivist law theory is irrelevant. What matters for positivist rather what matters for positivist more is whether the law is enacted by the sovereign or correct authority. Morality is therefore irrelevant. Therefore, the law is valid only if the sovereign said it is valid. Here, there some pedigrees for the validity of law according to positivist theory. One of such pedigree is the sovereign must follow the established rules of law making procedures. And make sure first the law is passed by the correct law making authority.

This theory has criticized by scholars for defining law in relation to sovereignty or state (what is called correct authority) because law is older than the state historically and this shows that law exists in the absence of state. Thus, primitive law (a law at the time of primitive society) serves the same function as does mature law [Paton; 1967: 72-3]. Further the term sovereignty is different from jurisdiction to jurisdiction. For some it it’s the constitution document is a sovereign by itself and for the other it is vested on the parliament or the highest law making organ of the state. It could either be understand in some country from the leader who assume power on the given state. In addition to that

the positive law theorists encountered a contention with respect to law making procedures. Specially the question who should label down those procedures and how. Particularly how does this sovereign qualify or decide which law to pass. Based on what? Then, morality is not guiding the law making of laws. Then what is? How the sovereign could decide the good law from bad laws. Hence, positive law theory is not helpful to distinguish good laws from bad laws or correct laws from incorrect. Rather all the positivist theory help us to distinguish valid law from invalid. In addition to that positive law theory fails for not ascertaining or justify the process of law making or how the law is enacted.

With regard to sanction as a condition of law in positive law, it is criticized that the observance of many rules is secured by the promise of reward (for example, the fulfilment of expectations) rather than imposing a sanction. Even though sanction plays a role in minority who is reluctant, the law is obeyed because of its acceptance by the community "habit, respect for the law as such, and a desire to reap the rewards which legal protection of acts will bring" are important factors the law to be obeyed [Paton; 1967:74]. The third main criticism of definition of law by Austin (positive law theory) is that it is superficial to regard the command of the sovereign as the real source of the validity of law. For positivist two things must be present before it is considered to be a law. One the law should always be passed by competent or correct authority. Second that correct authority should follow the correct established law making procedures.

iii. Legal Realism (Realist School of Law)

Conceives law as judge made and by doing so it puts the court at the center. It contends that positive law cannot be applied in the abstract, rather, judges should take into account the specific circumstances of each case, as well as economic and sociological realities. In other words, the law should not be static, it must adapt to various social and economic realities. This theory emphasizes the role of the judge that is it emphasizes that law is made not found, and considers judges as the true law makers. Realist theory of law is interested in the actual working of the law rather than its traditional definitions. It provides that law is what the judge decides in court. According to this theory, rules not put to use to solve practical cases are not laws but merely existing as dead words and these dead words of law get life only when applied in reality. Therefore, it is the decision given by the judge but not the legislators that is considered as law according to this theory. Hence, this theory believes that the lawmaker is the judge and not the legislative body. This theory has its basis in the common law legal system in which the decision previously given by a court is considered as a precedent to be used as a law to decide future similar case. This is not applicable in civil law legal system, which is the other

major legal system of the world, and as a result this theory has been criticized by scholars and countries following this legal system for the only laws of their legal system are legislation but not precedents. This implies that the lawmaker in civil law legal system is the legislative body but not the judge. For realist the judicial decision making or the ruling of the court is subjective since law is ambiguous, unclear etc. what legal realist say is what legal realist say what bring the outcome of the case is not the fact involved in the particular case nor the law that should apply to resolve dispute rather the judge. Therefore, judges moral belief, his particular position in the society, his upbringing and schooling matters most. So does to the positivist realists also has four pedigrees of thoughts.

i. Law protect powerful economic interest first;
ii. The outcome of the legal dispute is determined by judge's morality, perspective personality; judges are not super human and are likely influenced by their lives.
iii. Since judges are responsible to interpret law, are likely being influenced by public good;
iv. Since lawyers can predict how judge's ruling could likely be on certain case by examining judges' behavior or past cases they will chose forum whereby they will be at disadvantage.

Law and the ideals that it stands for is difficult to define and over the millennia of time legal writers and philosophers, from Anicient Greece and Rome such as Socrates, Aristotle and Plato and to modern times, John Locke and Thomas Hobbes have tried to define law. Consequently, there are many varied definition of the 'law' but the common theme with all of them is that, it is a set of rules that regulate the relationship of people in society to ensure legal, social and political order. The law, in the context of business law is also concerned with legal rules, principles and procedures to ensure that people who engage in business do so in a proper manner ensuring that transactions are entered into in a fair and just manner. Accordingly, the law maintains a 'balance between the interests of all persons and business organizations and provides a mechanism for transparency and check and balance to promote fairness. Equity and consistency in the application of law. Therefore, business or commercial law is concerned with the rules, procedures and customs that are associated with various business activities, such as the sales of goods and services that are conducted on a regular daily basis such that impact on both contract law and tort law. Even though not everyone or everyone understand or even knows all of the law, it is presumed that everyone knows the existence of the body of law. This means that people cannot escape from legal responsibility by claiming that

they did not know the law was being broken people are generally at a disadvantage if they do have some ideas of their legal position in society.

1.3. Functions of Law : -

Why we need law? What functions does law have in your localities? As the issue of definition of law, there is no agreement among scholars as to the functions of law. Jurists have expressed different views about the purpose and function of law. It is well known that law is a dynamic concept, which keeps on changing with time and place. It must change with changes in the society.

A. Means of Ascertaining Justice: - Law, in the modern sense, is considered not as an end in itself, but is a means to an end. The end is securing of social justice. Almost all theorists agree that law is an instrument of securing justice. The other object of law is ensuring justice. The justice may be either distributive or corrective. **Distributive** justice seeks to ensure fair distribution of social benefits and burden among the members of the community**. Corrective** justice, on the other hand, seeks to remedy the wrong. Thus if a person wrongfully takes possession of another's property, the court shall direct the former to restore it to the latter. This is corrective justice. Rule of law is *sine qua non* for even-handed dispensation of justice. It implies that everyone is equal before law and law extends equal protection to everyone; judges should impart justice without fear or favour and like cases should be treated alike.It must, however, be stated that justice alone is not the only goal of law. The notion of law represents a basic conflict between two different needs, namely, the need for uniformity and the need for flexibility. Uniformity is needed to provide certainty and predictability. That is, where laws are fixed and generalized, the citizen can plan his/her activities with a measure of certainty and predict the legal consequence of his/her conducts. This is even more necessary in case of certain laws, notably, the law of contract or property. Uniformity and certainty of rules of law also bring stability and security in the social order. Today the following are taken as important functions of law.

B. Social control – members of the society may have different social values, various behaviors and interests. It is important to control those behaviors and to inculcate socially acceptable social norms among the members of the society. There are informal and formal social controls. Law is one of the forms of formal social controls. As to Roscoe Pound, law is a highly specialized form of social

control in developed politically organized society. Lawrence M. Freedman explains the following two ways in which law plays important role in social control; first, law clearly specifies rules and norms that are essential for the society and punishes deviant behaviour. “Secondly, the legal system carries out many rules of social control. Police arrest burglars, prosecutors prosecute them, courts sentence them, prison guards watch them, and parole broads release them [Steven; 2003: 19]

C. **Dispute settlement: -** Disputes are un avoidable in the life of society and it is the role of the law to settle disputes. Thus, disagreements that are justiciable will be resolved by law in court or out of court using alternative dispute settlement mechanisms [Steven; 2003: 20].

D. **Social change: -** A number of scholars agree about the role of law in modern society as instrument to social change. Law enables us to have purposive, planned, and directed social change [Steven; 2003: 20-21]. **Flexibility** of law provides some measure of discretion in law to make it adaptable to social conditions. If law is rigid and unalterable, it may not respond to changes spontaneously which may lead to resentment and dissatisfaction among the subjects and may even result into violence or revolution. Therefore, some amount of flexibility is inevitable in law [Biset; 2006].

1.4. What is Business Law?

It is quite logical to define the term ‘business first before resort to define the law. Like that of defining the term law, defining business law is not a simple task. The Commercial Code of Ethiopia defines the law as a composite of corporeal and incorporeal things as well as good will. Rather than giving a detail characteristics to the term business the law opts for articulating what does business embraces off. Henceforth, the Code define business as a composite of incorporeal, corporeal things and good will. Though it is not seems helpful from the code to define the term business, we can draw a definition with the combined readings of article 127 – 129 of the same code as : Business is either incorporeal or corporeal things or their combination to render trading activities as set out by the competent governmental authority so as to generate a profit. The term business law however could either be defined as the composite of all the laws that dictate how to form and run a business. This includes all of the laws that govern how to start, buy, manage, and close any type of business. Business law then establishes rules that all businesses should follow. Therefore, the term Business law could be defined as a

set of laws that identify the manner how one can form, operates and close the business. As it is clearly depicted, business law is not only a simple law but it is systematized and set of laws which states the modalities of doing business, the form how one can render its business as well as it identifies the situation when and the modalities how to close certain business. Business law is the body of law which governs business and commerce and is often considered to be a branch of civil law and deals both with issues of private and public laws. Commercial law regulates corporate contracts, hiring practice, and the manufacture and sales of consumer goods.

1.5. **Source of Business Law: -** In the literature of jurisprudence the problem of 'sources' relates to the question: where does the judge obtain the rules by which to decide cases? In this sense, among the sources of law will be commonly listed: statutes; judicial precedents; custom; the opinion of experts; morality; and equity. In the usual discussions, these various sources of law are analyzed and some attempt is made to state the conditions under which each can appropriately be drawn upon in the decision of legal controversies. This question directs to the source of business law.

a. Custom as a source of law: - Custom is one of the oldest sources of law making. However, the importance of custom as a source of law continuously diminishes as the legal system grows. The reason being that with the emergence and growing power of the State, custom is largely superseded by legislation as a source of law. [Paranjape; 2001: 190ff].

b. International Agreements as Source of Ethiopian Laws: Ethiopia signs different international bilateral and multilateral trade related agreements with different countries of the world. Furthermore Ethiopia is the member of different trade related institutions covenants and treaties. The enforcement of these agreement primarily depends on national laws of states for the benefit of the nationals of which they are developed. Consequently, it induces states to conform their national legal systems to the standards it set-up. By signing international instruments, states undertake to comply, in good faith, with rights and freedoms recognized in the instruments they endorse. As members of community of nations, they are also under obligations to live up to the standards entrenched in customary international trade laws. They are also duty bound to accomplish all those other tasks necessary for the realization of the rights and freedoms.

c. Legislation as a source of Law : The term 'legislation' is derived from Latin words*, legis* meaning law and *latum* which means "to make" or "set". Thus, the

word ‘legislation’ means ‘making of law’. Legislation is that source of law, which consists in the declaration of legal rules by competent authority. The term legislation has been used in different senses. In its broadest sense, it includes all methods of law making. In its technical sense, however, legislation includes every expression of the will of the legislature, whether making law or not. Thus, ratification of a treaty with a foreign State by an Act of Parliament shall be considered law in this sense. Nevertheless, in strict sense of the term, legislation means enacted law or statute law passed by the supreme or subordinate legislatures.

d. <u>Court Decisions as Source of Law:</u> The doctrine of *stare decisis* literally means “let the decision stand in its rightful place.” When a decision contains a new principle, it is binding on subordinates courts and has persuasive authority for equivalent courts. This rule is based on expediency and public policy. Although this doctrine is generally followed by the courts but it may not be applicable if the court is convinced that the earlier wrong is likely to perpetuate resulting into erroneous decision.

- End of Part One -

Part – Two
Legal Personality

2.1. Personality:-

The law of persons is that part of private law which regulates the conception, the existence, and the termination of the natural person as a legal subject. The law of persons thus determines: -

(a) Who are legal persons
(b) How one becomes or ceases to be a legal subject
(c) The various classes of legal subjects
(d) What is the legal position (status) of each of these various classes of legal subject is.

The word '*person* ' traces its roots from the Latin '*persona'* which in its ancient usage of the theatre meant "the mask which covers the figure of the actor." The mask indicated the role that the actor played, and the audience in effect "recognized the character as soon as it saw the mask." The words "*human being*" and "*person*" are not interchangeable. All human beings in modern legal systems are persons, and *take part* in legal relationships as subjects of rights and duties. Thus unlike Ancient Roman Law there is no distinction among human beings with regard to legal personality. However, entities other than human beings also *take part* in legally defined relationships as holder of rights and bearer of obligations. In popular parlance "person" denotes physical or natural persons. But in day-to-day social interaction, entities other than natural persons interact among themselves and/or with natural persons Thus, the term 'person' refers to both human beings and juridical entities. Modern doctrine speaks of legal personality as the capacity to be bearer of rights and duties (*a* ***subject of rights***) and calls him (her) who has this capacity a **person** in the legal sense. Today all human beings (natural persons) have legal personality. Furthermore, certain forms of organizations (associations with legal personality, foundations, the state, etc.) are recognized by law as persons, and these organizations, therefore are called juristic persons.

2.1.1. Natural Persons: - The concept of natural persons refers to a human being. Every human being, from a new –born baby to an adult, is a legal subject, and every human being can have rights and duties. For instance, the law protects the physical

integrity and honour of a new –born child, and also determines that he or she can inherit property.

2.1.2. Juristic /Juridical Persons/ Legal personality is not restricted to human beings. In fact various bodies and associations of persons can, by forming a corporation to carry out their functions, create an organization with a range of rights and duties not dissimilar to many of those possessed by human beings. In Ethiopian law such corporations are formed by partnership Agreement, proclamation, or registration under the Companies. As a result of requirements of legal and commercial intercourse, the law is obliged to recognize as legal subjects entities other than human beings. This does not mean that these entities aquire natural personality of human beings of that they have a physical existence, but merely that these entities recognized as holders of rights and powers and subject to duties. These entities are elevated by the law to the status of juristic or artificial persons. but not to that of natural persons. A company, universities, agencies, and state are all examples of juristic persons. One of the features of juristic persons is that it has rights and is subject to duties; another features is that it has perpetual succession. This means that although the individuals who comprise the juristic person may die, the juristic person continues to exist. A juridical person usually has a distinct legal existence separate from its members. A case in point (in this regard) is the continued existence of the entities even after the partial or total change of their founding individual members. Such legal entities (either public or private} as stated above are endowed with juridical personality. Same as physical persons, these legal persons have rights and duties; enter into contracts, can sue, be sued and perform various juridical acts. However, it must be noted that there are rights of personality that cannot be exercised by juridical persons, such as the right to vote. It has been already indicated that every human being can be the bearer of rights and duties. Every human being is therefore a legal subject. At what stage does a human being become the bearer of rights and duties? The answers to these questions appears to be that a human being and its legal capacity come into existence at birth. The right of an unborn child are, however also protected provided that the child is indeed subsequently born alive and viable.

Thus, "*persons*" can be defined as human beings or legal entities that are holder (or bearer) of rights, and "personality" refers to all the attributes that have legal protection. The phrase "*subject of rights*" (used in Article 1 of the Ethiopian Civil Code) obviously implies corresponding duties as well, because the rights of any person apparently impose a reciprocal duty on others to observe these rights. For example, a certain person's rights with regard to the privacy of correspondence or the inviolability of residence

presuppose the duty of others to respect these rights. The term "*subject of the law*" is different from "*object of the law*". Everything that is covered by the law is its object, but it is not expected to bear rights and duties. A negligent driver who runs over a dog violates the rights of property of the owner of the dog. The owner of the dog is subject of rights in this example. And he will be subject of duties (extra contractual liability) in case his dog bites anyone. Similarly, a person who kills a wild animal in violation of the laws on wildlife conservation infringes the law.

2.2. Commencement of physical personality

"The human person is subject of rights from its birth to its death"
(Article 1 of the 1960 Civil Code of Ethiopia)
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The words "*human person*" (under Article 1) refer to anyone who is member of mankind; i.e. to anyone who has the distinct features of a human being. Deformities and handicaps are acceptable as long as they are the sorts that could occur through various natural or other misfortunes. Physical personality begins from *birth* and lasts until *death.*

2.3. Anticipated personality: Conception and viability

But the child not yet born is already, from the time of its conception, capable of acquiring rights. It is considered, by anticipation, as already figuring as a person. This anticipated personality, recognized on behalf of the child, may also produce concrete effects. This takes place either where there is a question of acquiring a new nationality, or of the voluntary recognition of natural paternity or maternity, or of a right to an allowance in the case of a workman's accident which happened to its father. But this personality is admitted only in the interest of the child. There are instances where the interest of a conceived child is put at stake if personality is attributed only after birth. A case in point is the inheritance right of a child whose father has died before he is born, as envisaged under Article 834 of the Civil Code. Similarly, the interest of a conceived child should be protected where a parent dies under circumstances that entitle children of a deceased to receive damages, life insurance or other payments. Article 2 is meant to solve such problems. It reads:

A child merely conceived shall be considered born whenever ***his interest*** *so demands provided that he is* ***born alive*** *and* ***viable*** (Article 2).

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A child is deemed to have been conceived on the 300th day preceding its birth (Article 3). A conceived child may acquire personality while he is still in his mother's womb provided that:

(a) his *interest* so requires, particularly where the interest of a conceived child requires that he be called for succession (Article 834),
(b) he is born *alive*, and,
(c) he is *viable* (i.e.- capable of living for at least forty-eight hours after birth (Arts. 4/1 and 4/2).

2.4. Conditions of Personality for Child Yet to be Born

For the personality of the conceived child to be recognized after its birth there are two basic elements must fulfilled:

i. The child must be born alive: A child must not only born but also born alive. Not much needs to be said on this condition. This will essentially be a question to be determined by medical evidence. As already mentioned, a test consists in establishing the existence of respiration by checking the entry of air into the lungs; another one refers to independent circulation. Let us only mention that the condition of being born alive is as essential as the previous one. A child, dead in his mother's womb, will never be considered as having had personality. But it is also true that this condition has no importance as such because of the existence of the viability condition. Obviously if the child has to live for forty-eight hours in order to be considered a person, he must necessarily be born alive. *Viability* clearly includes the condition of being born *alive*. Yet, Article 2 distinctly states the requirements of being born *alive* and *viable*, most likely because in the case of a stillborn child, the condition of being born alive is not met; and in effect, the issue of viability doesn't arise. If on the other hand, the child who had acquired personality during conception is stillborn, or is born alive but not viable, the personality that was conditionally acquired during its conception is of no effect. Viability is *presumed* where a child lives for 48 (Forty eight) hours after its birth (Article 4/1). Moreover, a child who dies within 48 hours after its birth "due to a cause other than a deficiency in (bodily) constitution" is presumed to be viable because s/he wouldn't have died at that moment had it not been for the incidence that caused the child's death.

ii. The child must be born viable Under Article 4 of the Civil Code, the Ethiopian legislator has opted for a solution in which some presumptions are constituted enabling one to determine (in some cases without any possible contestation) if a child is or is not viable. First, a child who lives for 48 hours is presumed to be a person from the moment of his conception onwards. This presumption is irrebuttable. The only important point in this case is the exact determination of the hour of birth as, once the time has passed, there is no possible rebuttal of the presumption. We will consider this problem subsequently. Second, if a child dies before the expiry of the 48 hour limit, there is a presumption that he is not viable and the first presumption, that he was a person from the 300^{th} day before his birth onwards, cannot operate. But contrary to the first case, this second presumption is not irrebuttable and can be challenged in court. Again medical evidence will be essential as the party challenging this presumption will have to prove that death is not the result of a deficiency in the child's constitution. These last six words are fundamental for the application of this section of Article 4. They cannot be interpreted at the moment as it will be for the courts, on the basis of medical evidence, to decide progressively what are or are not deficiencies in a child's constitution. Still there are obvious cases where the death does not result from a constitutional deficiency, e.g., if the child is dropped by someone and dies of a fracture of the skull, if he is killed in an automobile accident, etc. If it is proved that death came as a result of something other than a deficiency, then the child can be considered as having been viable. Assuming that the three above-mentioned conditions exist, the date of conception is fixed by Article 3 of the Civil Code at the 300^{th} day before birth. This avoids all discussion about the exact date of conception (which cannot yet be determined by medical evidence). The presumption is declared irrebuttable by the same article and there is, accordingly, no possibility of establishing that a child was conceived more or less than three hundred days before its birth, even if one could prove, for instance, that his parents were separated on that precise day.

However, although the presumption laid down in Article 3(1) is irrebuttable, Article 3 (3) establishes the principle that the rule laid down in Article 3 (1) shall have no bearing on the provisions of the Civil Code dealing with filiation, in the case where the identity of the father of the child is in issue. This seems to refer to Article 743 (Article 128 of the Revised Family Code). It deals with presumptions as to conception in wedlock and fixes

the moment of the latter at a minimum of 180 days after the marriage and a maximum of 300 days after its dissolution. Thus according to Article 743, the moment of conception is not necessarily fixed at a certain number of days before birth; it can vary between 300 and 180 days. On the contrary, Article 3 fixes the precise date for the moment of conception. The purpose of section 3 of the latter article is to avoid.

- **End of Part Two -**